

Application Serial No.: 10/829,606
Attorney Docket No.: 2S14.1-031

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In Re Application of: SIMPSON et al.

Serial No.: 10/829,606

Filed: April 22, 2004

For: "PET LITTER PAN ENCLOSURE"

) Conf. No.: 6850

) Group Art Unit: 3643

) Examiner: GRILES, Bethany L.

JAN 31 2007

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

January 31, 2007

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Applicant requests review pursuant to the Pre-Appeal Brief Conference Pilot Program. 1296 Off. Gaz. Pat. Off. 67 (12 July 2005, and extended 10 January 2006).

This request is submitted along with a Notice of Appeal, a Petition for One-Month Extension of Time, and the requisite fees therefor. In the event that any further extensions of time are required, please consider this a request therefor. The Commissioner is authorized to charge any additional fees due or credit any overpayment to Deposit Account 50-1513.

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being transmitted to the U.S. Patent and Trademark Office via facsimile on the date indicated below.


Bradley K. GroffDate 1/31/07

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Status of Claims:

Claims 1-17 and 23-25 remain pending in the present application and stand finally rejected. As explained in more detail below, Applicant submits that the present grounds of rejection cannot be sustained. Accordingly, Applicant believes that all claims are in condition for allowance and respectfully requests such action.

The Standing Rejections Are Clearly Deficient and without Basis:

A. Claim Rejections under 35 U.S.C. § 102(b)

Claim 1 stands rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,699,754 to Cahajla. This rejection is erroneous and cannot be sustained. Claim 1 includes the feature of a "moisture-resistant plastic stranded material woven onto said frame to present the appearance of a rattan material". This feature is not disclosed by the Cahajla reference. Even the Examiner implies that this claim limitation is not disclosed or suggested by Cahajla, asserting that she "cannot give weight to the fact that Applicant claims appearance of a rattan material, as it would be possible for the definition of a rattan appearance to cover the scope of many different structures." (Office Action of October 4, 2006, page 2). But it is improper to simply disregard claim language because the claim language may encompass several structures. "When a claim covers several structures or compositions, either generically or as alternatives, the claim is deemed anticipated if any of the structures or compositions within the scope of the claim is known in the prior art." M.P.E.P. § 2131, *quoting Brown v. 3M*, 265 F.3d 1349, 1351, 60 USPQ2d 1375, 1376 (Fed. Cir. 2001). Here, Cahajla does not anticipate any structure comprising "moisture-resistant plastic stranded material woven onto said frame to present the appearance of a rattan material," as recited in Claim 1.

Moreover, Cahajla does not disclose an enclosure for a pet litter pan having moisture-resistant plastic stranded material **woven** onto the frame. Rather, Cahajla discloses a "perforated," "screen-like structure, such as that of a plastic colander" There is simply no disclosure or suggestion whatsoever in Cahajla of any stranded material **woven** onto a frame, as claimed.

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In view of the above, it is clear that an essential element necessary to properly establish a *prima facie* §102(b) rejection is lacking, and that an appeal would be a waste of the Office's and the Applicant's resources. Accordingly, reconsideration and withdrawal of the §102(b) rejection is respectfully requested.

B. Claim Rejections Under 35 U.S.C. §103(a)

Claims 2-17, 23 and 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,699,754 to Cahajla in view of U.S. Patent No. 6,230,915 to Liu. This rejection is erroneous and cannot be sustained. First, each of Claims 2-11, 16, and 17 include the feature of a "moisture-resistant plastic stranded material woven onto said frame to present the appearance of a rattan material". As detailed above, Cahajla does not disclose or suggest this claim element. Liu fails to cure this deficiency, as Liu is directed to a basket made of actual natural rattan, rather than a "plastic stranded material," as claimed. Proximity to a pet litter pan would cause natural rattan to absorb moisture and odors, which is undesirable, and which is avoided through the use of the claimed plastic stranded material.

Claim 10 includes the feature of "at least one rail along an interior face [of the front panel] for sliding a litter pan thereon." Claims 12-15 and 23 include the feature of "at least two rails" (as amended in the Supplemental Response and Amendment filed on June 29, 2006) along the interior face of one of the claimed enclosure's panels, for sliding a litter pan along during insertion and removal of the litter pan from the enclosure. This feature is not disclosed or suggested by Cahajla or Liu, or by any combination thereof.

In the Response to Arguments section of the Final Office Action of October 4, 2006, the Examiner appears to take the position that the horizontal rods 43 of Liu "do fit a definition of rails." Then the Examiner further states that the connector feet as claimed by the Applicant are equivalent to the elements 42 and 43 of Liu. Thus, it appears that the horizontal rods 43 of Liu are being inconsistently applied as both "rails" on which a litter pan can be slid and as "connector feet". The Examiner's use in this

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manner of a single element of Liu, namely rods 43, to correspond to two elements of the Applicant's claimed invention is unsupportable.

Then, in the Claim Rejections section, it appears as though the Examiner has applied the "outer peripherally-extending lip 32" of the litter tray 12 of Cahajla, and not the rods 43 of Liu, to Applicant's claimed "rails". But the lip 32 of Cahajla cannot be considered a "rail", as that term would be understood by one skilled in the art. But even if Cahajla's lip 32 were a rail, it certainly cannot be considered to meet the claim limitation of "at least two rails" as recited in Claims 12-15 and 23. Nor does Cahajla disclose or suggest that a litter pan can be slid along the lip 32 during insertion and removal of the pan, as recited in Applicant's claims, because Cahajla's lip 32 is *part of* the litter pan itself. See column 2, lines 52-59 of Cahajla.

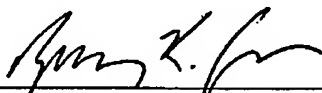
Claim 24 includes the feature of Applicant's enclosure whereby "panels are attached to one another by connector feet for engaging adjacent panels". This feature is not disclosed or suggested by Cahajla or Liu, or by any combination thereof. The Examiner has applied the "extension 42" and the "horizontal rods 43" of Liu's "third connector 4" to Applicant's connector feet. But no portion of Liu's "connector" serves as a "foot", as that term would be understood by one skilled in the art. Accordingly, this component cannot properly be applied to Applicant's claimed "connector feet". Furthermore, the extension 42 and horizontal rods 43 of Liu's third connector 4 are specifically indicated to engage corresponding features of Liu's "first connector 3", rather than "engaging adjacent panels" as recited in Applicant's Claim 24. See column 23 lines 4-17 of Liu.

Claim 25 includes the feature of "a removable catch tray having notched corners for receiving said connector feet." Though Claim 25 has been indicated to be rejected, the Examiner provided no specifics as to why Claim 25 is rejected. Nevertheless, Applicant submits that this feature is not disclosed or suggested by Cahajla or Liu, or by any combination thereof. There is no disclosure, teaching or suggestion in Cahajla or Liu of a removable catch tray having notched corners for receiving connector feet.

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In view of the above, it is clear that an essential element necessary to properly establish a *prima facie* obviousness rejection under §103 is lacking, and that an appeal would be a waste of the Office's and the Applicant's resources. Accordingly, reconsideration and withdrawal of the stated grounds of rejection is respectfully requested, and favorable indication of allowance is earnestly solicited.

Respectfully submitted,



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